

立法會

Legislative Council

LC Paper No. LS62/10-11

Paper for the Bills Committee on Buildings (Amendment) Bill 2010

Proposed amendments to include the new building safety initiatives

Background

At the meeting of the Bills Committee held on 20 April 2011, advice was sought on whether amendments might be made to the Buildings (Amendment) Bill 2010 (the Bill), given its scope, to include the new building safety initiatives in the Bill (the Proposed Amendments)¹. As requested by members and having considered the Administration's response to issues raised at the meeting on 20 April 2011 (LC Paper No.CB(1)2177/10-11(02)) , the advice given at the meeting is elaborated below for members' reference.

Requirement of relevance

2. Rule 57(4)(a) of the Rules of Procedure (also known as the scope rule) provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. This rule applies to amendments proposed by members or the Administration.

3. Based on the past rulings of the President and the former President on the question of the relevance of a proposed amendment, it would appear that the President, in deciding this question, will form a view on the scope of the bill, against which he will consider whether the effect of the proposed amendment is within the scope, hence, relevant to the subject matter of the bill. When considering the question of scope or subject matter of a bill, the President may take into account all relevant factors including the bill's long title, explanatory memorandum and the Legislative Council Brief (LegCo Brief). However, there is no exhaustive list of relevant factors, which must depend on the facts of each case. Discussions on certain issues that take place in a Bills Committee or the time taken to discuss these issues cannot on their own be considered as relevant to the scope or subject matter of a bill. What may be considered relevant in discussions that take place at a Bills Committee meeting does not

¹ Please see paragraphs 6 to 13 of LC Paper No.CB(1)1423/10-11(01) issued by Development Bureau in February 2011 to the Bills Committee, which is attached at the Appendix.

necessarily become relevant to the subject matter of the bill that the Bills Committee is considering.²

4. According to the long title of the Bill, the purpose of the Bill is to amend the Buildings Ordinance (Cap. 123) (BO) to "provide for matters relating to the regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe; and to make related, consequential and other minor amendments". The "matters" referred to in the long title may be clarified in the LegCo Brief and reflected in the provisions of the Bill.

5. Paragraph 1 of the LegCo Brief states that the Bill is introduced for the implementation of a mandatory building inspection scheme (MBIS)³ and a mandatory window inspection scheme (MWIS)⁴, and paragraph 4 further states that "The consultation pointed to a community consensus that owners should be responsible for keeping their buildings in good repair, including shouldering the financial commitment, and that mandatory inspection schemes should be pursued. The Government thus announced in mid-2007 the plan to legislate for the implementation of the mandatory inspection schemes for buildings and windows...". Provisions relating to details of MBIS and MWIS are in a self-contained new Part of BO (i.e. Part IIA – INSPECTION AND REPAIR OF BUILDING). In the Bill, there are proposed provisions supporting the new Part such as the introduction of two categories of persons, that is, registered inspectors (RI) and qualified persons, who are to deal with the inspection and repairs under MBIS and MWIS and the appointment, control and duties of such persons. There are also other specific proposed provisions to repeal provisions in BO which stipulates that the decision of the Court of First Instance on appeal is final and to make textual amendments to BO. It is further noted that paragraph 8 of the LegCo Brief states that unauthorized building works (UBWs) identified in the MBIS will be handled in accordance with the existing enforcement policy and RI appointed for MBIS inspections will be required to report to the Building Authority (BA) UBWs identified in the common parts

² In the President's ruling dated 4 May 2006 on Dr Hon YEUNG Sum's proposed amendment to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 relating to the nomination arrangement in the event that there was only one Chief Executive candidate and nomination re-opened, the President ruled that the Member's proposed amendment was outside the scope of the Bill although the possibility of another round of nominations in the event of only one candidate validly nominated and the proposed consequential electoral arrangements had been discussed in the Bills Committee.

³ Under MBIS, BA is empowered to require owners to carry out inspections not more than once every ten years and necessary repair works in relation to the common parts, external walls and projections (including signboards) of private buildings aged 30 years or above, except domestic buildings not exceeding three storeys in height.

⁴ Under MWIS, BA is empowered to require owners to carry out inspections not more than once every five years and necessary repair works in relation to windows in common parts as well as individual premises of private buildings aged 10 years or above, except domestic buildings not exceeding three storeys in height.

and external walls of the buildings (but not those inside individual units that are not covered by the MBIS) inspected. These would be relevant factors which the President would take into account when determining the scope of the Bill.

6. In the light of the above, it appears that, as far as measures to enhance building safety is concerned, the Bill provides for MBIS and MWIS only. Further, save as specifically mentioned in paragraph 5 above, the long title, the explanatory memorandum or the LegCo Brief does not seem to suggest that the Bill could, or are intended to, include other matters regulated by existing provisions of BO.

The Proposed Amendments

7. The Proposed Amendments at issue can be divided into 5 categories.

Surcharge for Defaulted Works

8. The new sections 30B(11) and 30C(9) in the Bill provide for the imposition of a surcharge of 20% on the cost incurred by BA to be recovered from an owner who has failed to comply with a notice served under MBIS and MWIS. The Administration now proposes to extend this arrangement to cover all statutory orders issued under BO, including all non-MBIS and non-MWIS orders. Based on the policy reason for such proposal provided by the Administration, it seems difficult to see that the proposal is directly related to MBIS and/or MWIS.

Penalty for Refusing to Share Cost of Works

9. Clause 25(4) of the Bill amends section 39B(1) of BO to add an offence for refusal to pay the relevant share of the inspection and repair costs for the common parts for works being undertaken by a building's owners' corporation (OC) in compliance with an MBIS/MWIS notice issued by the BA. The Administration now proposes to extend this arrangement to all works required by statutory orders in respect of common parts of the building that are undertaken by OCs under the BO. Similar to the proposal mentioned in paragraph 8 above, it seems difficult to see how such proposed extension relates to MBIS and/or MWIS.

Warrants for Entry of Interiors of Individual Premises

10. The Administration now proposes to amend section 22 of BO to provide for application to the Court for warrants for entry into individual

premises under BO. No amendment to section 22 of BO is proposed in the Bill. In paragraph 11 of the Appendix, the Administration stated that this will be "particularly useful for inspections relating to subdivided units or flats suspected to have illegal internal alterations". It is not clear from that paragraph how "subdivided units" and "flats suspected to have illegal internal alterations" relate to MBIS and/or MWIS, having considered paragraph 8 of the LegCo Brief as mentioned in paragraph 5 above, and why the implementation of these two schemes would necessitate the amendment to section 22 of BO. In the Administration's response, it is stated that if the owners refuse to conduct the inspections under MBIS and MWIS, BA may need to enter into the flats to verify if the notices have been complied with. It would therefore appear that the amendment to section 22 in so far that it relates to such power of entry could be relevant to the two schemes. However, since the amendment to section 22 has general application within BO and not restricted to the two schemes, a question may arise as to whether the amendment to section 22 in so far that its application goes beyond the two schemes would fall outside the scope of the Bill.

Control of Signboards

11. Signboards are included in MBIS (new section 30B(6)). The Administration now proposes to introduce a statutory dedicated control scheme for signboards, which would allow certain existing unauthorized signboards after safety checks by registered building professionals or registered contractors to be conducted once every five years (paragraph 12 of the Appendix). It appears that such a scheme is targeted at signboards only and is independent of, and separate from, MBIS. The Administration has not indicated that such scheme is not a separate scheme from MBIS. In fact, the Administration admitted in its response that it is "in nature a sequel to MBIS" and "in fact an improvement of the original scheme concerning signboards enshrined in the Bill", and it provides "an alternative and more practical means to handle unauthorized signboards in buildings".

Registered Inspectors to Comprehensively Report Exterior Unauthorized Building Works

12. In the Bill, the new section 30D(5) requires RI to notify BA of UBWs in the common parts, or to an external wall that is not in the common parts, of the building, that are identified during the course of inspection under MBIS. The Administration now proposes to require RI to also notify BA of UBWs on roofs, podiums, yards and lanes that are not in the common parts of buildings in order to "dovetail with the Administration's plan to enhance enforcement actions against UBWs", which would "facilitate the BA's

implementation of the new approach to take prompt actions against such UBWs with a view to creating a stronger deterrent effect against UBWs on the exterior of buildings". MBIS covers the common parts, external walls and projections (including signboards) of buildings (see footnote 3). It seems difficult to see how roofs, podiums, yards and lanes that are not in the common parts of buildings could relate to MBIS, and how the policy reason for such proposal could tally with paragraph 8 of the LegCo Brief as mentioned in paragraph 5 above.

Conclusion

13. As indicated in paragraph 6 above, the Bill provides for MBIS and MWIS only. Therefore, any "related" amendments referred to in the long title should relate to MBIS or MWIS and must be incidental and necessary. It appears that the Proposed Amendments involve measures to enhance building safety other than MBIS and MWIS and matters relating to the existing provisions of BO other than those included in the Bill. On that basis, it is difficult to see how the Proposed Amendments relate to MBIS and/or MWIS.

14. Under the Rules of Procedure, it is the President who will make the ruling on any proposed amendment, having considered its actual wording and all relevant factors in the normal way.

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Extract from LC Paper No. CB(1)1423/10-11(01)

**Bills Committee on Buildings (Amendment) Bill 2010
(Updated) Proposed Major Committee Stage Amendments**

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LEGISLATIVE PROPOSALS

6. The Subcommittee on Building Safety and Related Issues under the Development Panel was consulted on 13 January 2011 on the proposal to include the new building safety initiatives in the Bill. Members were in support of the Administration submitting the details of the proposal to this Bills Committee for scrutiny. A list of the draft CSAs is at **Annex A** and a marked-up copy of the relevant provisions of the BO showing the CSAs is at **Annex B**.

(i) Surcharge for Defaulted Works

[Clauses 19 and 20(3) to amend the section 33 and proposed new sections 30B and 30C of the BO]

7. We proposed in the Bill that the Building Authority (BA) may, for the MBIS and MWIS, impose a surcharge of 20% on the cost incurred by the BA to be recovered from an owner who has failed to comply with a notice served under the proposed section 30B(3), (4), (5) or (6) or 30C(3) or (4) (proposed sections 30B(11) and 30C(9) in clause 19 of the Bill). The Bills Committee is supportive of this proposal.

8. We propose extending this arrangement to cover all statutory orders (including all non-MBIS/MWIS orders) issued under the Buildings Ordinance (Cap. 123) (BO) so as to create a stronger deterrent effect against non-compliance. With a stronger deterrent effect, owners will be more willing to properly maintain and repair their buildings and comply with the statutory orders in a timely manner. The proposal will facilitate the implementation of the MBIS/MWIS as buildings will generally be kept in a better condition and the inspection/repair works needed when they are required to join the MBIS/MWIS will be minimized.

(ii) Penalty for Refusing to Share Cost of Works

[Clause 25 to amend section 39B and new clause 27(16) to amend section 40 of

the BO]

9. Similarly, given the community's support for the imposition of appropriate penalties on non-compliant cases (targeting uncooperative owners), we proposed in the Bill that it will be an offence if an owner/occupier, without reasonable excuse, refuses to pay the relevant share of the inspection and repair costs for the common parts for works being undertaken by his/her building's owners' corporation (OC) in compliance with an MBIS/MWIS notice issued by the BA (clause 25(4) of the Bill). This arrangement will deter uncooperative owners from hindering the inspection and repair works. We propose to extend this arrangement to all works required by statutory orders in respect of common parts of the building that are undertaken by OCs under the BO.

10. It is proposed in the Bill that an owner/occupier who, without reasonable excuse, refuses to pay the relevant share of the inspection and repair costs for the common parts for works being undertaken by his/her building's OC in compliance with a statutory notice issued by the BA under the MBIS/MWIS is liable to imprisonment and fine. In the light of Members' concern expressed at the Bills Committee, we propose removing the imprisonment terms but increasing the proposed fine from level 3 to level 4 (i.e. from \$10,000 to \$25,000) [see the letter from the Development Bureau to the Bills Committee dated 3 December 2010 (ref: CB(1)666/10-11(01))]. This proposed fine would also be applicable to the expanded arrangement mentioned in paragraph 9 above.

(iii) Warrants for Entry of Interiors of Individual Premises

[New clause 16A to amend section 22 of the BO]

11. Section 22 of the BO currently empowers officers of BD to enter into any individual premises and, in the presence of a police officer, break into such premises to ascertain their safety. Nevertheless, in practice, it is difficult for the BD to exercise this power. The work of BD is often frustrated by uncooperative owners or occupants who refuse to grant entry to BD's staff, despite the department's effort of paying visits to the flats during different times of the day and week which incur significant staffing resources. However, being fully mindful of the public's private property rights, the BD will only resort to its power of forced entry in extreme cases where there is a clear sign of imminent danger. Operational experience of other departments reveals that with the issue of a warrant from the Court, owners will more readily cooperate and grant entry for inspection and/or necessary repair works. We propose to introduce legislative amendments to provide for application to the Court for warrants under the BO to facilitate BD's enforcement actions. This will be particularly useful for inspections relating to subdivided units or flats suspected

to have illegal internal alterations. Reference has been made to the similar arrangements in the Public Health and Municipal Services Ordinance (Cap. 132), Waterworks Ordinance (Cap. 102), Shipping and Port Control Ordinance (Cap. 313), Fire Safety (Buildings) Ordinance (Cap. 572), etc. which have similar provisions.

(iv) Control of Signboards

[Clause 26 to amend section 39C of the BO]

12. Unauthorized signboards are another persistent building safety problem in Hong Kong. It is estimated that there are about 190 000 unauthorised signboards in Hong Kong. Many of them are in active use by business operations while others are simply abandoned. We propose to bring in a statutory control scheme, similar to the one for specified minor building works (small canopies, drying racks and supporting frames for air-conditioners) under the Building (Minor Works) Regulation (Cap. 123 sub. leg. N) (B(MW)R), under which the continued use of certain existing unauthorized signboards (e.g. within stipulated dimensional requirements, not blocking operation of emergency vehicles, etc.) will be allowed after safety checks by registered building professionals or registered contractors. The safety checking has to be renewed once every five years. Unauthorized signboards not joining the scheme will be subject to BD's enforcement actions. Regarding new signboards, small ones will be taken care of by the minor works control system, while larger ones will continue to require the prior approval and consent of BD before installation. With the new schemes, BD will in time establish a comprehensive database of all signboards in Hong Kong and have a firmer grasp of their safety conditions to facilitate control and enforcement action.

(v) Registered Inspectors to Comprehensively Report Exterior Unauthorized Building Works

[Clause 19 to amend the proposed new section 30D(5)(b) of the BO]

13. Under the proposed sections 30D(5)(b) in clause 19 of the Bill, the RI appointed to carry out a prescribed inspection must notify the BA of any building works that have been or are being carried out in contravention of any provision in the BO in the common parts, or to an external wall that is not in the common parts, of the building, that are identified during the course of the prescribed inspection. To dovetail with the Administration's plan to enhance enforcement actions against unauthorized building works (UBWs), we propose that the RI should also notify the BA of any UBWs on roofs, podiums, yards and lanes that are not in the common parts of the buildings. This would facilitate the BA's implementation of the new approach to take prompt actions against such UBWs with a view to creating a stronger deterrent effect against

UBWs on the exterior of buildings.

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